In the
Supreme Court of the United States
OCTOBER TERM, 1960

No. [redacted]

CLEO E. LOVETT,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR PETITIONER

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REPORTS OF OPINIONS BELOW

The District Court entered judgment and imposed sentence but did not hand down an opinion.

The opinion of the United States Court of Appeals for the Fifth Circuit has not yet been published in any official or unofficial report. That opinion appears herein, however, at Appendix "A", Page 24.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

1. The date of the judgment sought to be reviewed and the time of its entry is March 17, 1961.

2. Petition for rehearing was filed on April 12, 1961, and order denying the same was entered on April 25, 1961, without an opinion.

3. The statutory provision conferring jurisdiction on this court to review the opinion and judgment in question is set forth in 28 U.S.C.A. 1254, which provides in part:

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree;"

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the ruling in the case of *Holland v. United States*, 348 *U. S.* 121, 99 *L.Ed.* 150, 75 *S. Ct.* 127, that a charge to the jury that circumstantial evidence must be consistent

with guilt and inconsistent with innocence should not be given, should be limited to "net worth" tax prosecutions in the nature of the *Holland* case; and therefore whether the court below erred in affirming the failure to give such a charge in this case which is not a "net worth" tax prosecution but rather a case involving criminal conspiracy.

(2) Whether or not counsel for petitioner complied with Rule 30 of the Federal Rules of Criminal Procedure in his request that the general charge on circumstantial evidence be given by the trial judge (R. 733-735, 740-742).

(3) Whether or not the trial court's refusal to charge as requested on the issue of circumstantial evidence was such a patent error of law as would warrant the review of such ruling under the Provisions of Rule 52(b) of the Federal Rules of Criminal Procedure.

STATUTORY PROVISIONS AND SUPREME COURT RULE INVOLVED

The statutes involved are:

Federal Rules of Criminal Procedure, 30 and 52(b), 18 U. S. C. A., Appendix "B" Page 28.

The Supreme Court Rule involved is:

Supreme Court of the United States Revised Rules effective July 1, 1954, Rule 19, Considerations Governing Review on Certiorari, Sub-Paragraph 1(b) reading in part as follows: "Where a Court of Appeals . . . has decided an important

question of Federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court, or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

STATEMENT OF THE CASE

The Petitioner Cleo E. Lovett was indicted by the Grand Jury on the 19th day of February, 1960. The indictment charged that Petitioner, with divers other persons, did conspire to violate sections, 5601, 5606, 5008(b), 5632 and 7206(f), Title 26, Internal Revenue Code. (R. 2)

The cause came on for trial May 10th, 1960, in the District Court of the United States for the Middle District of Alabama, Southern Division, before the Honorable Frank M. Johnson, Jr., District Judge. (R. 7). The Petitioner and his alleged co-conspirators, with whom he was tried, entered pleas of not guilty. (R. 8-18).

During the course of the trial, The Government sought to establish certain facts through the testimony of numerous witnesses and the introduction of certain other evidence. By and large the testimony against the Petitioner was circumstantial although there was some direct evidence offered through the testimony of one Robert Dale Nettles, an alleged accomplice. Mr. Nettles testified that from February until June he worked with the Defendant Wood and others in the operation of an illegal whiskey still in or near Dothan, Ala-

bama, and in or near Bainbridge, Georgia. This witness testified that he was hired by Defendant Wood to help in the alleged moonshine operation (R. 42), that he was taken by the Defendant Wood to the site of a still on the farm of Cleo Madison (R. 47) and that arrangements had been made with Cleo Madison by the Defendant Wood to keep the illegal still on his property. (R. 47). Witness Nettles' testimony was further to the effect that he had in fact operated a still at the orders of Kenneth Wood (R. 74) and had further transported whiskey to a secret cache at the instigation of Kenneth Wood (R. 74) and that he had contacted Petitioner Wilbur Reeves to inform Reeves that the whiskey had been deposited in the cache. (R. 71-76). Witness Nettles further testified that Wood purchased sugar for the still operations from one Tyree Murdock (R. 96-100) and that after the still located at Cleo Madison's was raided in April of 1959 that he and Wood and Petitioner Cleo Lovett with divers other persons set up another still near Bainbridge, Georgia (R. 111) and that arrangements were made by Wood to put the still on or near the land of Petitioner Cleo Lovett (113-115) and that he overhead conversations between Wood and Petitioner Cleo Lovett concerning the operation of the still (R. 115-125) and that he continued to operate the still and to transport non-tax paid whiskey at the orders of Wood. (R. 114).

The other witnesses called by the Government testified largely as to circumstantial evidence which, if believed, would tend to connect the Petitioner and the other Defendants to the alleged conspiracy. A. B. Reynolds gave testimony concerning a certain electric meter and the bills for electricity relating thereto, said meter being located near the property of Petitioner Cleo Lovett in Bainbridge, Georgia. (R. 220-228). Special investigator for the Alcohol and Tobacco Tax Division Behen testified that he had visited an abandoned